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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LEONARD WAYNE GORDON, Defendant and Appellant.	G040672 (Super. Ct. No. 07WF0149) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Luis A. Rodriguez, Judge. Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Leonard Wayne Gordon guilty of first degree residential burglary, receiving stolen property, possession of a controlled substance, and possession of controlled substance paraphernalia. Gordon admitted he had three prison priors within the meaning of Penal Code section 667.5, subdivision (b). The trial court struck the prison priors for sentencing purposes, and imposed a prison sentence totaling four years. On appeal, Gordon contends there was insufficient evidence to support the burglary conviction and instructional error. We disagree and affirm the judgment.

I

On January 12, 2007, at approximately 10:00 p.m., Deputy Sheriff Tommy Montoya saw Gordon sitting sideways and motionless in the driver's seat of a parked car. Montoya shined his flashlight into the car, prompting Gordon to sit up, exit the car through the passenger door, and run away. Montoya chased Gordon and yelled for him to stop. He caught and tackled Gordon as he attempted to enter his apartment nearby.

Montoya searched Gordon and found a glass smoking pipe and a baggy containing methamphetamine. Gordon said the car belonged to his girlfriend, but he had been driving it for the past three days to go to work. In the car, Montoya found a pillowcase containing several woman's purses, a belt, jewelry, keys, small personal items, and a postcard bearing a Garden Grove address. Gordon claimed a friend named Kelly gave him the pillowcase at 7:00 p.m. "days ago" or a "few days ago" at a storage facility in Stanton. When questioned further, Gordon admitted he had looked in the pillowcase and it contained "only costume jewelry."

Montoya recalled Gordon seemed scared and evasive when further questioned about the exact date he obtained the pillowcase. Montoya attempted to assist Gordon by assigning dates to the days. He recounted the conversation as follows: "With his answers being vague . . . [as] to a date, just in conversation I described, was it like

three days ago, two days ago, and as he kind of broke it down a little bit, I started putting dates to it, being I was working the night of the 12th, was it yesterday? It wasn't yesterday. That would be the 11th. Was it the day prior then [the] 10th [or] 9th, and he eventually agreed that it was the 9th, several days before the incident."

Montoya contacted the Garden Grove Police Department due to the address listed on the stolen postcard. He learned that on January 11 (the day before Gordon's arrest) Lavina Mulvey's home was burglarized between 10:00 a.m. and 1:00 p.m. Mulvey said the pillowcase and some of the items found inside it, including the jewelry, were hers.

At trial, the prosecution presented evidence Montoya's apartment was approximately 11 minutes away from Mulvey's home in Garden Grove. It would have taken about 19 minutes for Gordon to have driven from his work to the Mulvey residence and then to his apartment. From January 8 to January 11, Gordon worked the night shift from 11:00 p.m. to 7:00 a.m. Gordon's girlfriend's son recalled (and testified) that on January 11, Gordon got home at 8:30 a.m. and stayed at home with him all day because he was home sick from school.

II

A. Sufficiency of the Evidence

Gordon maintains the burglary conviction is not supported by substantial evidence. He asserts it can be inferred from the evidence he knowingly possessed stolen property, but there is nothing in the record to connect him with the burglary. He argues the prosecution's case rested on insufficient corroborating circumstances: (1) his possession of stolen property 36 hours after the burglary; (2) his flight from the car; and (3) his contradictory statements concerning the stolen property. He concludes this evidence supports the possession of stolen property only. In essence, he asks us to reweigh the evidence in his favor. This we cannot do.

"The standard of review is well settled: On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt." (*People v. Snow* (2003) 30 Cal.4th 43, 66, internal citations and quotation marks omitted.)

As Gordon correctly noted, his mere possession of stolen property was insufficient in itself to establish he committed a burglary, as there must also "be corroborating evidence of acts, conduct, or declarations . . . tending to show his guilt." (*People v. Citrino* (1956) 46 Cal.2d 284, 288.) However, "[w]hen, as here, a defendant is found in possession of property stolen in a burglary *shortly after the burglary occurred*, the corroborating evidence of the defendant's acts, conduct, or declarations tending to show his guilt *need only be slight* to sustain the burglary convictions. [Citations.]" (*People v. Mendoza* (2000) 24 Cal.4th 130, 176, italics added.)

Here, there is adequate corroborating evidence. Gordon was found less than 48 hours after the burglary with the stolen property, he fled from a police officer, and he gave evasive and false answers when questioned about those items. Specifically, he misrepresented the nature and value of items inside the pillowcase. He also falsely claimed to have received the items *days before* they were actually stolen.

On appeal, Gordon asserts different inferences can be made from this evidence. He points out the January 9 date was supplied by Montoya after repeated questioning, and because Gordon did not volunteer the date, it should be disregarded. He argues there was nothing "inherently inconsistent or otherwise suspicious about [his] initial response, that he was given the property 'days ago'" because he was being questioned under extremely stressful conditions, near midnight, over 36 hours after the burglary. At trial, he provided an alibi witness for when the burglary occurred on January 11. Gordon asserts his flight from the police officer did not naturally or logically lead to the conclusion he was guilty of a burglary occurring 36 hours earlier, because his flight was not from the scene of the crime but merely from the vehicle where the stolen property was located. He also challenges the relevance of the prosecution's evidence showing he worked and lived a short distance from the Mulvey's house, arguing he was but one of hundreds of people living in the area and having an opportunity to burglarize.

But as stated earlier, we do not reweigh the evidence. The jury evaluated Montoya's credibility and drew a different but reasonable inference than the one suggested by Gordon. Montoya stated several times that he found Gordon was acting suspiciously and was evasive when questioned about when he obtained the pillowcase. Gordon's responses prompted Montoya to further question Gordon to pin down a date. During the course of their conversation, Gordon denied receiving the stolen property "yesterday" (January 11) and falsely stated the property was given to him several days before it was actually stolen. The fact Gordon accepted Montoya's suggested January 9 date is significant, given that Gordon had already rejected the more likely dates of January 11 or 12 if he had merely been given stolen property. Gordon said he knew the contents of the pillowcase, and then downplayed their value. The jury could have concluded the alibi testimony of Gordon's girlfriend's son was not credible. And although Gordon's flight from the police and his nearness to the crime scene were less

relevant factors in this particular case, these facts do not undermine the conviction. We conclude the above corroborating evidence was sufficient to affirm the conviction.

B. Instructional Error

For the same reasons given to support his insufficiency-of-the-evidence argument above, Gordon asserts that because the corroborating evidence was insufficient to support the burglary conviction, it was error to instruct the jury with Judicial Council of California Criminal Jury Instructions (2008) CALCRIM No. 376 (Possession of Recently Stolen Property as Evidence of a Crime). That instruction allows a jury to convict a defendant possessing stolen property of the underlying burglary based on "slight" corroborating evidence.[1] As in Gordon's insufficiency-of-the-evidence argument, he contends the evidence in this case did not rise to the level of "slight" corroboration. He concludes, the instruction should only be given in cases where the corroborating evidence tying defendant to the crime is stronger. However, as explained in more detail in the previous section of this opinion, we conclude the corroborating evidence was sufficient to support the burglary conviction. Accordingly, the trial court properly instructed the jury with CALCRIM No. 376.

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[1] The court instructed the jury as follows: "If you conclude that the defendant knew he possessed property and you conclude that the property had in fact been recently stolen, you may not convict the defendant of Penal Code section[s] 459-460, and Penal Code section 496, [subdivision] (a), based on those facts alone. However, if you also find that supporting evidence tends to prove his guilt, then you may conclude that the evidence is sufficient to prove he committed Penal Code section[s] 459-460, as charged in count 1, and Penal Code section 496, [subdivision] (a), as charged in count 2. [¶] The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstances tending to prove his guilt of Penal Code section[s] 459-460, and Penal Code section 496, [subdivision] (a). [¶] If you determine that the defendant made any false, contradictory or inconsistent statements relating to the property found in his possession that too may be considered. [¶] Remember that you may not convict the defendant of any crime unless you are convinced that each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt."

III

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.